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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 551

In the Matter

of

JOHN M. RUSSELL, INC.,

Bankrupt.

ALLAN D. EMIL, as Trustee in Bankruptcy of John M. Russell, Inc.,

Appellant,

HARRY HANLEY, Receiver,

Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

DAVID HAAR,
Attorney for Petitioner.

THE COURT PRESS, N. Y. C.

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HARRY HANLEY, Receiver,
Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and to the Associate Justices of the Supreme Court of the United States:

Your petitioner, Allan D. Emil, as Trustee in bankruptcy of the above-named John M. Russell, Inc., bankrupt, respectfully submits this petition for a writ of certiorari for the purpose of reviewing a decision and order of the United States Circuit Court of Appeals for the Second Circuit in the above-entitled proceeding.

The decision was by a divided Court. It affirmed an order of the United States District Court for the

Eastern District of New York, denying your petitioner's application for an order requiring the respondent, Harry Hanley, as Receiver, to file his accounts with the Bankruptcy Court, in which the estate of John M. Russell, Inc., bankrupt, was being administered. The application for such order was made directly under the provisions of the Bankruptcy Act, as amended in 1938, and commonly known as the Chandler Act. The specific sections of the Bankruptcy Act pursuant to which your petitioner felt himself entitled to the relief which he sought and which has now been denied, are Sections 2a, subd. 21, and 69d, 11 U. S. C. A., sect. 11a, subd. 21, and sect. 109(d). These sections are set forth herein at p. 9.

The Court below, in affirming the order, relied upon the opinion of Hon. Learned Hand (R., p. 25). Hon. Charles E. Clark dissented in a written opinion (R., p. 30).

Jurisdiction.

The order of affirmance was entered in the Circuit Court of Appeals on August 31, 1942 (Clerk's Certified Order). The jurisdiction of this Court is invoked under Section 240a of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347a).

The Issues of Law Involved.

There is a clear line of demarcation as to interpretation of the Statute between the majority and the dissenting opinions. The issue is clarified by the reasons presented in the two opinions for the respective interpretations of the Statute, pursuant to

which your petitioner believes himself entitled to the order prayed for, and which has so far been denied."

It should be noted that even in the majority opinion, the Court said "we are not sure what Congress meant by the added phrase 'agents authorized to take possession of, or liquidate a person's property'" (R., p. 29). On the other hand, the dissenting opinion expresses a firm conviction that the Receiver here was "subject to the supervision of the Bankruptcy Act as to his allowances and disbursements". Judge Clark points out "that the opinion concedes doubt as to what this means (referring to the foregoing quoted excerpt from Section 2a, subd. 21), but is content again to rely on General Bankruptcy Rules apart from the sections itself" (R., p. 36).

The important issues, therefore, may be stated as follows:

1. Was the majority of the Court justified in its interpretation of the applicable sections of the Bankruptcy Act so as to affirm an order which denied the trustee's right to compel an accounting of a State Court mortgage foreclosure receiver, with respect to rents collected by him and moneys disbursed by him, when all of those moneys were collected after the filing of the petition in bankruptcy against the bankrupt, of which the petitioner is the trustee?

2. Does the phrase "receivers or trustees appointed in proceedings not under this Act" and the phrase "agents authorized to take possession of, or to liquidate a person's property" used in Section 2a, Subd. 21 of the Bankruptcy Act, exclude a receiver in a mortgage foreclosure suit

begun in the State Court prior to the filing of the petition, when the evidence is clear that this receiver collected rents of the real estate belonging to the bankrupt after the date of the filing of the petition?

3. Does the phrase "a receiver or trustee not appointed under this Act of any of the property of the bankrupt shall be accountable to the Bankruptcy Court in which the proceeding under this Act is pending * * *" used in sect. 69d of the Bankruptcy Act, exclude a receiver in a mortgage foreclosure suit where the receiver was appointed prior to the filing of the petition, but collected rents after the filing of the petition, and which rents, so collected, are sought to be made the subject of an order for an accounting in the Bankruptcy Court?

As stated, the majority opinion in the Circuit Court of Appeals held to the interpretation excluding the right to an accounting from such a receiver. The dissenting opinion held to the contrary.

Statement of Facts.

On August 31st, 1940, John M. Russell, Inc. was petitioned into involuntary bankruptcy in the Eastern District of New York (R., p. 5). On the date when the petition was filed, the bankrupt was the owner of an apartment house, completed about two or three months before that date, and which apartment house was located in Great Neck, Long Island (R., p. 3).

On the date when the petition was filed, there was pending a suit in foreclosure against the bankrupt on behalf of a third mortgagee who held a mortgage of

$16,000 on the property, which was then past due (R., p. 3). That foreclosure suit was commenced on or about August 13, 1940 (R., p. 7). On August 17th, 1940, a Judge of the Supreme Court of the State of New York made an order appointing the respondent herein, Harry Hanley, "as receiver of the rents and profits" of the apartment house, pending foreclosure (R., p. 7).

A year later, to-wit, on August 14, 1941, the judgment in foreclosure was transferred by the plaintiff in that suit, by assignment to some unknown parties, and the sale under the judgment of foreclosure was abandoned (R., p. 4).

A motion was made by the respondent, Mr. Hanley, as receiver, to settle his accounts in the State Court, but that motion was withdrawn as premature (R., p. 4). The attention of Mr. Hanley's attorney was called to the provisions of the Bankruptcy Act requiring the Receiver to account in the Bankruptcy Court, and requesting the receiver to file such an accounting with the Referee in charge of the proceedings (R., p. 4). In spite of such request, the receiver proceeded in the State Court with his accounting (R., p. 4).

The attention of the Supreme Court was called to the fact that the then owner of the property was in control of the judgment, and that in all likelihood he would do nothing to bring on a sale of the property pursuant to the judgment (R., p. 5).

The receiver's accounting of his receipts and disbursements as presented in the Supreme Court, shows that he was appointed on August 17, 1940, but that he did not take possession of any moneys, to-wit, he did not collect any rents from the property until after September 1st, 1940. That is just one day after the petition in bankruptcy was filed (R., p. 5).

The foreclosure suit in question begun in August, 1940, proceeded to judgment in the name of the then plaintiff, Frederick Russell, on June 13th, 1941 (R., pp. 8, 9). The premises were advertised for sale for August 6, 1941. The sale was adjourned to August 14, 1941, but before that day, and on August 13, 1941, the judgment was paid and satisfied and the action was terminated, except for the accounting of Harry Hanley, the Receiver, the respondent in this matter (R., p. 9).

During Mr. Hanley's receivership, he collected rents aggregating $30,533.05, out of which he disbursed $25,668.28, leaving a balance of $4864.99 (R., p. 9). This balance is subject to his claim for commissions in the sum of $1526.65 and the claim of his counsel for services in the sum of $1000 (R., p. 9).

Other facts which are relevant are these:

The motion of your petitioner as trustee was dated August 15, 1941, and returnable on August 22d, 1941, in the United States District Court for the Eastern District of New York (R., p. 2). The notice of motion states that its object was to obtain an order requiring Mr. Hanley "to file his accounting of receipts and disbursements with the Referee in charge of these proceedings and be subject to all the rights and obligations with respect to such accounting as if he were a receiver of this Court" (R., p. 2).

Although the motion was argued on August 22d, 1941, it had not yet been decided in January of 1942. In that month, the Court before which the motion had been argued, requested counsel to submit affidavits as to what occurred in the State Court accounting proceedings.

Thereupon your petitioner's attorney, Mr. David Haar, submitted an affidavit verified on January 6, 1942, in which he respectfully protested against the receipt of any further affidavits. However, he did state the facts with regard to the accounting. He repeated the important fact that the rents collected by Mr. Hanley as receiver were collected beginning with September 1st, 1940, "which is a date subsequent to the date of the filing of the petition against the bankrupt" (R., pp. 11, 12).

It also appears that your petitioner's attorney protested in the State Court against proceeding there with respect to the accounting and insisted that the matter should be heard in the Bankruptcy Court "because the receiver was accounting for property and moneys belonging to the Bankruptcy Court" (R., p. 12).

Mr. Haar pointed out items in detail which indicated quite clearly that the accounting was not correct, and that your petitioner as trustee not only was entitled to an accounting under the law, but that he was entitled to a surcharge of Mr. Hanley as receiver, with considerable sums of money disbursed by him unlawfully, and rents not collected by him in accordance with his duties (R., pp. 13, 14).

The District Court denied your petitioner's motion with an opinion (R., pp. 18, 19) in which he expresses a doubt as to whether Section 69d of the Bankruptcy Act affects a receiver appointed in a state Court "for the sole purpose of collecting rents from a specific parcel of land owned by the Bankrupt" (R., p. 19).

However, he expressed the opinion that the Supreme Court having appointed the receiver before the bankruptcy, had prior jurisdiction in the matter irrespective of the new sections which required receivers, who handled moneys or property belonging to the estate

after bankruptcy, to account to the Bankruptcy Court for the disposition of their trust (R., p. 19).

Reasons Relied On for the Allowance of the Writ.

1. *The decision of the* Second Circuit Court of Appeals (sought to be reviewed) is in conflict with the decisions of other Federal Courts on the same subject matter.

(Argument on this point will be found herein at p. 11.)

2. The decision affects an important recent amendment of the Bankruptcy Act (relating to non-bankruptcy receivers who take possession of and manage a bankrupt's property after bankruptcy), which has not been, but should be, settled by this Court.

(Argument on this point will be found herein at p. 15.)

3. The Court below has decided a federal question, to-wit, a question arising under the Bankruptcy Act, in a way that seems to conflict with prior decisions of this Court applicable to the subject-matter in controversy.

(Argument on this point will be found herein at p. 18.)

Wherefore, your petitioner respectfully prays that this petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit should be granted.

ALLAN D. EMIL,
As Trustee in Bankruptcy of John M. Russell, Inc., Bankrupt,
Petitioner.

Portions of the Bankruptcy Act to Which the Decision Applies.

The applicable statutes are new. They were included as innovations in the Chandler Act, which brought about many drastic and radical changes in bankruptcy administration. The following are the two sections upon which the petitioner relied for relief.

Sect. 2a, Subd. 21 of the Bankruptcy Act (U. S. C. A., Title 11, Ch. 2, Sect. 11) speaks of the jurisdiction of courts of Bankruptcy. Among other enumerated powers, they are empowered to

> "Require receivers or trustees appointed in proceedings not under this Act, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act, * * *, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: Provided, however, that such delivery and accounting shall not be required, except in proceedings under chapters X and XII of this Act, if the receiver or trustee was appointed, the assignment was made or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for serv-

ices and expenses under such receivership, trusteeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this Act, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive."

Closely related to this exercise of power is the provision added to Sect. 69, known as Sect. 69d:

"Upon the filing of a petition under this Act, a receiver or trustee, not appointed under this Act, of any of the property of a bankrupt shall be accountable to the bankruptcy court, in which the proceeding under this Act is pending, for any action taken by him subsequent to the filing of such bankruptcy petition, and shall file in such bankruptcy court a sworn schedule setting forth a summary of the property in his charge and of the liabilties of the estate, both as of the time of and since his appointment, and a sworn statement of his administration of the estate. Such receiver or trustee, with knowledge of the filing of such bankruptcy proceeding, shall not make any disbursements or take any action in the administration of such property without first obtaining authorization therefor from the bankruptcy court."

BRIEF IN SUPPORT OF PETITION.

POINT I.

The decision sought to be reviewed creates a conflict in the interpretation of the law involved between the Second Circuit and the Seventh Circuit. It is also in conflict with a decision of a District Court in the Third Circuit.

Matter of Park Beach Hotel Bldg. Corp. (7th Cir.), 96 Fed. (2) 886 (cert. denied *sub. nom. Pancoe* v. *Southman*, 305 U. S. 638;
In re Rosenberg, 128 Fed. (2) 924 (7th Cir);
Matter of Central Forging Co. (D. C. Pa.), 31 Fed. Supp. 1020.

Aside from the dissenting views expressed by Circuit Judge Clark (R., pp. 30-41) as to the application of Section 2a (21) and 69d of the Bankruptcy Act to the facts in this case, the Court should consider the decision in the Seventh Circuit on the subject.

In the case of *Matter of Park Beach Hotel Building Corp.*, 7 Cir., 96 Fed. (2) 886, a similar question arose within the year before September, 1938, the effective date of the Chandler Act. In that case too there was a foreclosure of a mortgage on an apartment house, owned by the debtor. As in our case, a receiver had been appointed to collect the rents pending foreclosure. The action to foreclose was still pending, when the owner of the property filed a petition for reorganization under the Bankruptcy Act.

Upon the filing of this petition, the foreclosure receiver surrendered possession of the property to the trustee. However, the receiver filed his report and accounting in the State Court, which had appointed him. That court approved the accounts, and awarded him an allowance for additional services. It also ordered compensation to his attorney out of the fund.

In the Bankruptcy Court, a protest was lodged by the trustee against the account, and demand was made that the receiver return to the estate the moneys which he had paid to himself and to his attorney.

The receiver contended (as the receiver did in this case) that the Bankruptcy Court was without jurisdiction to undo what the State Court had already done with respect to the allowance of compensation to him and to his attorney.

The Seventh Circuit Court overruled the contention, in the following language:

> "Upon adjudication, all property of the bankrupt vests in the trustee as of the date of the filing of the petition. The bankruptcy jurisdiction and the Court's possession and control of the estate in pursuance of the same, are paramount and exclusive and cannot be affected by proceedings in other courts, whether state or federal. *Taylor* v. *Sternberg*, 293 U. S. 470, 27 A. B. R. (N. S.) 1, 55 S. Ct. 260, 79 L. Ed. 599; *Gross* v. *Irving Trust Company*, 289 U. S. 342, 22 A. B. R. 1215. It follows that a receiver of the bankrupt's property in a prior pending proceeding is subject to this paramount authority, for the result of bankruptcy is binding upon both the court appointing the receiver and the receiver as custodian of that court. With the filing of

the petition for reorganization under the bankruptcy law and its approval the power of the state court ceased and the order fixing compensation of the receiver and his counsel entered thereafter was a nullity. *Taylor* v. *Sternberg, supra.*

From the moment the jurisdiction of the federal court attached, the estate in its entirety was held by the receiver as a mere repository for the bankruptcy court, and, therefore, not adversely. The receiver, having erroneously deducted compensation after the attachment of such jurisdiction, was in no sense an adverse claimant. His claim was colorable only and subject to the summary power of the bankruptcy court, which had the power to require him to file an account, the correctness of which is of necessity subject to the summary jurisdiction of the bankruptcy court. *Taylor* v. *Sternberg, supra.*"

Matter of Park Beach Hotel Bldg. Corp., 96 Fed. (2d) 886 (7th Cir.).

That case was decidedly weaker in its facts than ours. There, all the money had been collected out of the debtor's property by the receiver *before* bankruptcy. In our case all the money was collected out of the bankrupt's property *after* bankruptcy. In both cases however, the accounting was filed in the State Court after bankruptcy. Also, in both cases, it was the State Court that passed on the accounts of the receiver and gave him and his attorney compensation.

There the similarity stops. In the Seventh Circuit, the Court held the action of the State Court in fixing allowances *after* the Bankruptcy Court acquired jurisdiction to be a nullity, citing *Taylor* v.

Sternberg, 293 U. S. 470 and *Gross* v. *Irving Trust Co.*, 289 U. S. 342. In the decision now sought to be reviewed, the Second Circuit, in a majority opinion, held on similar facts that such action by the State Court and *with respect to moneys collected after bankruptcy*, was not a nullity.

It should be apparent that had the *Park Beach Hotel Building Corp.* case been presented to the Second Circuit, that that court would have decided the case differently than the Seventh Circuit did. The contrary is also true.

The Seventh Circuit followed this principle of interpretation of the new section 2a(21) in *In re Rosenberg* (May, 1942), 128 F. (2) 924. It required an "agent" in possession of real estate to account in the Bankruptcy Court under this section.

We therefore respectfully point to this conflict of decision between different circuits as justifying the granting of the Trustee's petition for a writ.

Perhaps we should call the Court's attention to another case of conflict. We refer to the case of *Matter of Central Forging Co.*, 31 Fed. Sup. 1020, a case in the District Court of Pennsylvania. There, too, a receiver had been appointed in a State Court before proceedings were begun for reorganization. The question came up as to whether that receiver was required to file his accounting in the Bankruptcy Court. The District Court of Pennsylvania said this:

> "The first question is whether a receiver appointed by a state court prior to commencement of reorganization proceedings must, as to acts done subsequent to the filing date of the reorganization petition, file his account in the state court or in the federal court.

Whatever the law was formerly, it is now settled by the amendatory Chandler Act of 1938 that as to acts done after the filing of the reorganization petition, the receiver must primarily account to the federal court rather than to the state court of his appointment."

Matter of Central Forging Co., Debtor, 31 Fed. Supp. 1020.

We believe it essential to uniformity of decision on so important a provision of our Bankruptcy Law, added in 1938, that this conflict of views between different circuits be eliminated by a decisive opinion of this Court. For that reason we respectfully submit that the petition should be granted and the writ issued.

POINT II.

Since uniformity and certainty of interpretation of Federal Statute Law is desirable, this petition for a writ should be granted, so as to settle the meaning of the terms "non-bankruptcy receivers, trustees and agents", in Sec. 2a (21), and Sec. 69 (d) of the Bankruptcy Act.

The prevailing opinion seems to base the decision on the dissimilarity between a "mortgage foreclosure receiver" and an "equity receiver" (R., p. 27). "Thus, the only question is whether the sections added in 1938 assimilated the two receiverships" (R., p. 27). The majority holds that "There is every antecedent reason to say that they did not" (R., p. 27). But the opinion goes on further to say:

"We are not sure what Congress meant by the

> added phrase: 'agents authorized to take possession of or liquidate a person's property' " (R., p. 29).

The dissenting opinion of Judge Clark expresses no doubt at all about the intent of Congress in enacting the new legislation. He says:

> "I think that under the express provision of the Chandler Act, now appearing as Bankruptcy Act, Sects. 2a (21), 69d, 11 U. S. C. A., Sects. 11a (21), 109d, as well as by virtue of its policy and purpose, this receiver is subject to the supervision of the bankruptcy court as to his allowances and disbursements" (R., p. 30).

Judge Clark goes to the heart of the matter when he refers to the fundamental principles of bankruptcy administration which were involved in the appeal. He says:

> "The whole purpose of bankruptcy is orderly, equitable distribution of a debtor's property. In ordinary bankruptcy, to be sure, Congress has left secured property outside the distribution hierarchy. *But we might by no means infer from this that assets must be eaten up by exorbitant charges for administering secured assets outside the bankruptcy court*" (R., p. 37).

If the decision were to remain as it is, resting solely on a doubtful distinction between one kind of receiver and another, and disregarding the important fact as to the origin and ownership of the *res* held by each, there will be such uncertainty of interpretation as to bring about confusion, rather than orderliness in bankruptcy administration. Judge Clark's prophecy of endless litigation "before we ever know who

is a receiver and who is not, under Sect. 2a (21)" (R., p. 35) will prove to be more than a premonition of dire consequences to follow. What Congress meant to do, in our opinion, was to strengthen the hand of the bankruptcy court as it reaches out to gather in a bankrupt's assets—no matter in whose possession, no matter what you call him. He who has possession of a bankrupt's property *especially if he acquired it after bankruptcy intervenes,* must turn it over, or account for every penny of it, to the bankruptcy court—whether the man who has possession of it be called receiver in foreclosure, receiver in equity, receiver in supplementary proceedings, assignee, trustee, custodial agent, liquidating agent, or by such other name as the fertile mind can conjure up.

It seems to us that the intent of Congress has been thwarted by the decision which we seek to review. The dissenting opinion, and the decisions in other circuits on the same subject, create a doubt as to the real intent of Congress in enacting these amendments in 1938.

Under these circumstances, there is presented here an important question of federal statute law that should be settled decisively by this Court. For that reason, too, we respectfully submit, the petition should be granted and the writ issued.

POINT III.

The decision of the Court below, affecting as it does the operation of a Federal Law, is in conflict with prior decisions of this Court relating to the same subject matter.

Gross v. *Irving Trust Co.*, 289 U. S. 342;
Lion Bonding v. *Karatz*, 262 U. S. 640;
Taylor v. *Sternberg*, 293 U. S. 470.

We believe that there can be no dispute of Judge Clark's statement in his dissenting opinion that "The whole purpose of bankruptcy is orderly, equitable distribution of a debtor's property" (R., p. 37). It certainly is one important purpose, the other one being the discharge of the bankrupt from his debts.

This Court has held repeatedly that the bankruptcy court's jurisdiction over a bankrupt's property is paramount (*Taylor* v. *Sternberg*, 293 U. S. 470). It is so far exclusive for administration purposes that the bankruptcy court is powerless to surrender its control in that regard (*U. S. Fidelity & Guaranty Co.* v. *Bray*, 225 U. S. 205; *Isaacs* v. *Hobbs*, 283 U. S. 734).

That paramount and exclusive power of administration over bankrupt's property was recognized before the Chandler Act was passed in 1938. Judge Clark gives instances in his dissent (R., pp. 32-34). Equity receivers, of course, must yield to this paramount power (*Gross* v. *Irving Trust Co.*, 289 U. S. 342; *Lion Bonding Co.* v. *Karatz*, 262 U. S. 640).

In the case of *Gross* v. *Irving Trust Co., supra*, this Court said:

"The jurisdiction of the bankruptcy court be-

> ing paramount, the power of the state court to fix the compensation of its receivers and the fees of their counsel necessarily came to an end with the supervening bankruptcy. When the bankruptcy court acquired jurisdiction, the sole power to fix such compensation and fees passed to that court."

In the case of *Lion Bonding Co.* v. *Karatz, supra,* this Court said:

> "Even where the court which appoints a receiver had jurisdiction at the time, but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the bankruptcy court."

We believe that the basic principle underlying the proper decision in this case will be found in *Taylor* v. *Sternberg, supra.* While it is true that there a receiver was appointed by a Chancery Court, and he was not a mortgage foreclosure receiver, nevertheless the decision did not turn on distinctions between one kind of receiver and another. This Court's decision in that case rested firmly upon principles of bankruptcy administration, to-wit: that primarily the Bankruptcy Court deals with the bankrupt's property, no matter in whose possession it may be found.

We quote from the decision:

> "Upon adjudication in bankruptcy, all the property of the bankrupt vests in the trustee as of the date of the filing of the petition. Upon such filing, the jurisdiction of the bankruptcy court becomes paramount and exclusive; and thereafter that court's possession and control of the estate cannot be affected by proceedings in other courts, whether state or federal. *Gross* v. *Irving Trust*

Co., 289 U. S. 342, 22 Am. B. R. (N. S.) 661, 53 S. Ct. 605, 77 L. Ed. 1243, 90 A. L. R. 1215; *Acme Harvester Co. v. Beekman Lum. Co.*, 222 U. S. 300, 27 Am. B. R. 262, 32 S. Ct. 96, 56 L. Ed. 208; *In re Diamond's Estate* (C. C. A., 6th Cir.), 44 Am. B. R. 268, 259 F. 70. This applies while the possession is constructive as well as when it becomes actual. *Mueller* v. *Nugent*, 184 U. S. 1, 7 Am. B. R. 224, 22 S. Ct. 269, 46 L. Ed. 405; *Taubel-Scott-Kitzmiller Co. v. Fox*, 264 U. S. 426, 2 Am. B. R. (N. S.) 912, 44 S. Ct. 396, 68 L. Ed. 770; *Orinoco Iron Co.* v. *Metzel* (C. C. A., 6th Cir.), 36 Am. B. R. 247, 230 F. 40, and cases cited."

In our case Hanley, the receiver, had collected over $30,000 of rents growing out of leases upon the bankrupt's apartment house. Every dollar of that $30,000 came into Hanley's possession after August 31, 1940, the date when the petition in bankruptcy was filed.

When the petitioner was appointed trustee of the bankrupt's assets, his title to this apartment house became vested as of August 31st, 1940, under Section 70 of the Bankruptcy Act. Moreover, by the amendment of 1938, the trustee's title became even more clearly defined in relation to the possession of a receiver. The very last sentence in Section 70 reads:

> "The title of the trustee shall not be affected by the prior possession of a receiver or other officer of *any* Court."

Thus the hands of the Bankruptcy Court had been strengthened in every conceivable way by the Chandler Act for the purpose of administering assets of the bankrupt, no matter in whose possession they may be found.

This Court, even before the Chandler Act was enacted, has held repeatedly that that principle of bankruptcy administration must be observed under the Statute, and that it is not a matter of one kind of a receiver or another kind of a receiver. If a person, call him what you will, *has possession of property belonging to a bankrupt*, and particularly, if he takes possession of it after bankruptcy, that person must account to the Bankruptcy Court, and to no other.

Insofar as the decision of a majority turns on the distinction between one kind of a receiver and another in its interpretation of Section 2, subd. 21, and Section 69d of the Bankruptcy Act, we respectfully submit that the Court below failed to take cognizance of this Court's ruling that what a Bankruptcy Court is concerned with is the *res*, and not with the persons who handle it. The rulings of this Court, we respectfully submit, have not been followed in the decision sought to be reviewed. For that reason, too, this Court should grant the writ prayed for.

Conclusion.

For the three reasons indicated in the petition, as elaborated in our argument, we respectfully submit that the petitioner is entitled to the granting of his petition, and that a writ of certiorari should be issued to the Circuit Court of Appeals for the Second Circuit, so that this Court may review the decision, and render such other decision in the case as the facts and the law justify.

Respectfully submitted,

DAVID HAAR,
Attorney for Petitioner.